

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 3369 of 1994

with

SPECIAL CIVIL APPLICATION No 5697 of 1994

For Approval and Signature:

Hon'ble MR.JUSTICE R.A.MEHTA

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1. Whether Reporters of Local Papers may be allowed to see the judgements?

2. To be referred to the Reporter or not?

3. Whether Their Lordships wish to see the fair copy of the judgement?

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?

5. Whether it is to be circulated to the Civil Judge?

1 to 5: No

PREYASKUMAR S MAJMUDAR

Versus

BANASKANTHA DISTRICT CO-OP. MILK PRODUCERS' UNION LTD

Appearance:

1. Special Civil Application No. 3369 of 1994

MR JA ADESHRA for Petitioner

MR KS NANAVATI for Respondent No. 1

2. Special Civil ApplicationNo 5697 of 1994

MR HS MUNSHAW for Petitioner

MR JA ADESHRA for Respondent No. 1

CORAM : MR.JUSTICE R.A.MEHTA

Date of decision: 17/03/98

ORAL JUDGEMENT

1. These two petitions arise from one dispute regarding termination of service. The workman was dismissed from service after a domestic inquiry on the allegation of theft of three packets of butter from the respondent-Cooperative Dairy. The Industrial Tribunal, by its judgment and award dated 21st October 1993, directed reinstatement with full backwages and continuity of service and costs of Rs.500/-.

2. The respondent Management made an application under Rule 26 for setting aside the award on the ground that on the last date of hearing, the respondent Management could not remain present and the award came to be passed in favour of the workman and against the Management. The Industrial Tribunal granted that application. Thereupon, the petitioner-workman filed Special Civil Application No.3369 of 1994 and the order setting aside that award was stayed.

3. Thereupon, the Management filed Special Civil Application No. 5697 of 1994 challenging that award on merits.

4. As far as the setting aside of the award is concerned, it is seen that the respondent-Management has appeared in the proceedings, filed written statement, produced documents, cross examined the witnesses, led the evidence and submitted written arguments. Even for oral arguments, time was granted from time to time and ultimately the respondent- Management had assured that arguments will be advanced on 5.10.1993 and again assured to do it on 12.10.1993. On 19.10.1993, oral arguments were advanced. In these circumstances, it cannot be said that the award was ex-parte and that the Management did not have sufficient opportunity to contest the matter. In view of all these circumstances, the Industrial Tribunal was not justified in setting aside the award on the ground that it was ex-parte. Hence, the petition filed by the workman being Special Civil Application No. 3369 of 1994 is required to be allowed and rule is made absolute by quashing and setting aside the judgment and order setting aside the award.

5. That takes us to the Special Civil Application No. 5697 of 1994 filed by the Management against the award.

The Industrial Tribunal has come to the conclusion on the basis of admitted evidence that the allegation of theft was not proved. The Tribunal has

noted that though the workman was said to have committed theft of the butter packets of the batch no.BY 003 and BY 018, the evidence of the Production Manager was that those batches were already despatched on 13.12.1990 whereas the incident of alleged theft is of 19.1.1991. There were many other circumstances also, such as the tiffin box from which the packets were alleged to have been recovered, was also containing another vessel (Vataki) and it was demonstrated that in such a small tiffin, these three packets of 200 gms. each could not have been kept. The enmity with the complainant was also established. In view of these facts, the Industrial Tribunal came to the conclusion that the charge was not proved and there was no evidence in support of the charge.

6. The Industrial Tribunal also held that the employer had filed an application for approval under section 33(2)(b) and that application was withdrawn and no orders were obtained on it.

7. The aforesaid findings of fact are based on clear evidence and there was no evidence of theft and the employer could not have dismissed the workman for the same. The Tribunal has rightly set aside the order of dismissal and granted reinstatement with continuity of service, full backwages and costs. Hence, this petition of the Management deserves to be dismissed.

8. However, the learned Counsel for the workman has stated that if the petitioner is reinstated within one week and also paid 75% of the backwages within three months from today, the petitioner will forgo 25% of the backwages. However, if this amount of 75% of backwages is not paid within three months, the award will continue to stand for full backwages.

While calculating 75% or 100% backwages, whatever amounts have been paid by way of wages under section 17-B will be adjusted. The backwages shall be calculated till the date of reinstatement.

mhs/-